Chapter 112

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Intestate Succession and Wills

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INTESTATE SUCCESSION

112.015 Net intestate estate. Any part of the net estate of a decedent not effectively disposed of by the will of the decedent shall pass as provided in ORS 112.025 to 112.055. [1969 c.591 §19]

112.017 [1993 c.598 §4; 1995 c.235 §1; repealed by 1999 c.133 §1]

112.020 [Amended by 1969 c.591 §70; renumbered 112.585]

112.025 Share of surviving spouse if decedent leaves issue. If the decedent leaves a surviving spouse and issue, the intestate share of the surviving spouse is:

(1) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the entire net intestate estate.

(2) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the net intestate estate. [1969 c.591 §20; 1987 c.329 §1]

112.030 [Amended by 1969 c.591 §71; renumbered 112.595]

112.035 Share of surviving spouse if decedent leaves no issue. If the decedent leaves a surviving spouse and no issue, the surviving spouse shall have all of the net intestate estate. [1969 c.591 §21]

112.040 [Amended by 1969 c.591 §73; renumbered 112.615]

112.045 Share of others than surviving spouse. The part of the net intestate estate not passing to the surviving spouse shall pass:

(1) To the issue of the decedent. If the issue are all of the same degree of kinship to the decedent, they shall take equally, but if of unequal degree, then those of more remote degrees take by representation.

(2) If there is no surviving issue, to the surviving parents of the decedent.

(3) If there is no surviving issue or parent, to the brothers and sisters of the decedent and the issue of any deceased brother or sister of the decedent by representation. If there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(4) If there is no surviving issue, parent or issue of a parent, to the grandparents of the decedent and the issue of any deceased grandparent of the decedent by representation. If there is no surviving grandparent, the issue of grandparents take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(5) If, at the time of taking, surviving parents or grandparents of the decedent are married to each other, they shall take real property as tenants by the entirety and personal property as joint owners with the right of survivorship. [1969 c.591 §22]

112.047 Forfeiture of parent's share by reason of desertion or neglect. (1) Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if the decedent was an adult when the decedent died and:

(a) The parent of the decedent willfully deserted the decedent for the 10-year period immediately preceding the date on which the decedent became an adult; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the 10-year period immediately preceding the date on which the decedent became an adult.

(2) Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if the decedent was a minor when the decedent died and:

(a) The parent of the decedent willfully deserted the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died; or

(b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died.

(3) For the purposes of subsections (1) and (2) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent.

(4) For the purposes of subsections (1) and (2) of this section, in determining whether the parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent whose intestate share would be forfeited under this section.

(5) The intestate share of a parent of a decedent may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 112.049. A petition filed under ORS 113.035 may not request the forfeiture of the intestate share of a parent of a decedent under this section. [2005 c.741 §2]

Note: Section 6, chapter 741, Oregon Laws 2005, provides:

Sec. 6. Section 2 of this 2005 Act [112.047] and the amendments to ORS 113.035 and 113.145 by sections 4 and 5 of this 2005 Act apply only to the estates of persons who die on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.741 §6]

112.049 Petition for forfeiture of parent's share. (1) A petition may be filed in probate proceedings to assert that the intestate share of a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) Four months after the first publication of notice to interested persons if the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by clear and convincing evidence. [2005 c.741 §3]

112.050 [Repealed by 1969 c.591 §305]

112.055 Escheat. (1) If no person takes under ORS 112.025 to 112.045, the net intestate estate escheats to the State of Oregon.

(2) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found, the share of that person escheats to the State of Oregon.

(3) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found:

(a) The Department of State Lands has the same preference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;

(b) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the Department of State Lands; and

(c) The Department of State Lands has all of the rights of the missing devisee or person for the purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:

(A) The right to contest any will of the decedent under ORS 113.075; and

(B) The right to information under ORS 113.145. [1969 c.591 §23; 2003 c.395 §2]

112.058 Preferences and presumptions in escheat proceedings. (1) In any proceeding to determine the escheat share of the estate of a decedent whose estate is wholly or partially subject to probate in this state:

(a) No preference shall be given to any person over escheat; and

(b) After diligent search and inquiry appropriate to the circumstances, the following presumptions apply in a proceeding to determine whether a missing person has died:

(A) A missing person whose death cannot be proved by other means lives to 100 years of age.

(B) A missing person who was exposed to a specific peril at the time the person became missing has died if it is reasonable to expect from the nature of the peril that proof of death would be impractical.

(C) A missing person whose absence is unexplained has died if the character and habits of the person are inconsistent with a voluntary absence for the time that the person has been missing.

(D) A missing person known to have been alive who has not been seen or heard from for seven years has died if the person has been absent from the person's usual residence, the absence is unexplained, there are other persons who would have been likely to have heard from the missing person during that period were the missing person alive, and those other persons have not heard from the missing person.

(2) In any proceeding described by subsection (1) of this section, a missing person who is presumed to be dead is also presumed to have had two children in addition to any known issue of the person unless the presumption of death arises by reason of the application of subsection (1)(b)(B) or (C) of this section. [2003 c.395 §4]

112.060 [Amended by 1969 c.591 §74; renumbered 112.625]

112.065 Representation defined. "Representation" means the method of determining the passing of the net intestate estate when the distributees are of unequal degrees of kinship to the decedent. It is accomplished as follows: The estate shall be divided into as many shares as there are surviving heirs of the nearest degree of kinship and deceased

persons of the same degree who left issue who survive the decedent, each surviving heir of the nearest degree receiving one share and the share of each deceased person of the same degree being divided among the issue of the deceased person in the same manner. [1969 c.591 §24]

112.070 [Amended by 1969 c.591 §75; renumbered 112.635]

112.075 Time of determining relationships; afterborn heirs. The relationships existing at the time of the death of the decedent govern the passing of the net intestate estate, but persons conceived before the death of the decedent and born alive thereafter inherit as though they were alive at the time of the death of the decedent. [1969 c.591 §25]

112.080 [Amended by 1969 c.591 §76; renumbered 112.645]

112.085 [1969 c.591 §26; 1973 c.506 §6; 1975 c.244 §1; repealed by 1999 c.131 §11]

112.095 Persons of the half blood. Persons of the half blood inherit the same share that they would inherit if they were of the whole blood. [1969 c.591 §27]

112.105 Succession where parents not married. (1) For all purposes of intestate succession, full effect shall be given to all relationships as described in ORS 109.060, except as otherwise provided by law in case of adoption.

(2) For all purposes of intestate succession and for those purposes only, before the relationship of father and child and other relationships dependent upon the establishment of paternity shall be given effect under subsection (1) of this section:

(a) The paternity of the child shall have been established under ORS 109.070 during the lifetime of the child or;

(b) The father shall have acknowledged himself to be the father in writing signed by him during the lifetime of the child. [1969 c.591 §28]

112.115 Persons related to decedent through two lines. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share. [1969 c.591 §29]

ADVANCEMENTS

112.135 When gift is an advancement. If a person dies intestate as to all the estate of the person, property which the person gave in the lifetime of the person to an heir shall be treated as an advancement against the heir's share of the estate if declared in writing by the decedent or acknowledged in writing by the heir to be an advancement. For that purpose the property advanced shall be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first. [1969 c.591 §30]

112.145 Effect of advancement on distribution. (1) If the value of the advancement exceeds the heir's share of the estate, the heir shall be excluded from any further share of the estate, but the heir shall not be required to refund any part of the advancement. If the value of the advancement is less than the heir's share, the heir shall be entitled upon distribution of the estate to such additional amount as will give the heir the heir's share of the estate.

(2) The property advanced is not a part of the estate, but for the purpose of determining the shares of the heirs the advancement shall be added to the estate, the sum then divided among the heirs and the advancement then deducted from the share of the heir to whom the advancement was made. [1969 c.591 §31]

112.155 Death of advancee before decedent. If the recipient of the property advanced fails to survive the decedent, the amount of the advancement shall be taken into account in computing the share of the issue of the recipient, whether or not the issue take by representation. [1969 c.591 §32]

STATUS OF ADOPTED PERSONS

112.175 Adopted persons. (1) An adopted person, the issue and kindred of the adopted person shall take by intestate succession from the adoptive parents, their issue and kindred, and the adoptive parents, their issue and kindred shall take by intestate succession from the adopted person, the issue and kindred of the adopted person, as though the adopted person were the natural child of the adoptive parents.

(2) An adopted person shall cease to be treated as the child of the person's natural parents for all purposes of intestate succession by the adopted person, the issue and kindred of the adopted person and the natural parents, their issue and kindred, except:

(a) If a natural parent of a person marries or remarries and the person is adopted by the stepparent, the adopted person shall continue also to be treated, for all purposes of intestate succession, as the child of the natural parent who is the spouse of the adoptive parent.

(b) If a natural parent of a person dies, the other natural parent remarries and the person is adopted by the stepparent, the adopted person shall continue also to be treated, for all purposes of intestate suc-

cession by any person through the deceased natural parent, as the child of the deceased natural parent.

(3) ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply to adopted persons who were adopted in this state or elsewhere. [1969 c.591 §33]

112.185 Effect of more than one adoption. For all purposes of intestate succession, a person who has been adopted more than once shall be treated as the child of the parents who have most recently adopted the person and, except as otherwise provided in this section, shall cease to be treated as the child of the previous adoptive parents. The person shall continue also to be treated as the child of a natural parent or previous adoptive parent only to the extent provided in ORS 112.175 (2), and for the purpose of applying that subsection with reference to a previous adoptive parent, "natural parent" in that subsection means the previous adoptive parent. [1969 c.591 §34]

112.195 References in wills, deeds and other instruments to accord with law of intestate succession. Unless a contrary intent is established by the instrument, all references in a will, deed, trust instrument or other instrument to an individual or member of a class described generically in relation to a particular person as children, issue, grandchildren, descendants, heirs, heirs of the body, next of kin, distributees, grandparents, brothers, nephews or other relatives shall include any person who would be treated as so related for all purposes of intestate succession, except that an adopted person so included must have been adopted as a minor or after having been a member of the household of the adoptive parent while a minor. [1969 c.591 §35]

WILLS

112.225 Who may make a will. Any person who is 18 years of age or older or who has been lawfully married, and who is of sound mind, may make a will. [1969 c.591 §36]

112.227 Intention of testator expressed in will as controlling. The intention of a testator as expressed in the will of the testator controls the legal effect of the dispositions of the testator. The rules of construction expressed in this section, ORS 112.230 and 112.410 apply unless a contrary intention is indicated by the will. [1973 c.506 §10]

112.230 Local law of state selected by testator controlling unless against public policy. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in the instrument of the testator unless the application of that law is contrary to the public policy of this state. [1973 c.506 §11]

112.232 Uniform International Wills Act. (1) As used in this section:

(a) "International will" means a will executed in conformity with subsections (2) to (5) of this section.

(b) "Authorized person" and "person authorized to act in connection with international wills" means a person who by subsection (9) of this section, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.

(2)(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of this section.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This section does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

(3)(a) The will must be made in writing. It need not be written by the testator. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the will of the testator and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the signature.

(d) If the testator is unable to sign, the absence of that signature does not affect the validity of the international will if the testator indicates the reason for inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

(4)(a) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on behalf of the testator or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(b) The date of the will must be the date of its signature by the authorized person. That date must be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the will. If so and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in subsection (5) of this section.

(d) A will executed in compliance with subsection (3) of this section is not invalid merely because it does not comply with this subsection.

(5) The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of this section for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, _____ (name, address and capacity), a person authorized to act in connection with international wills,
2. certify that on _____ (date) at _____ (place)
3. (testator) _____ (name, address, date and place of birth) in my presence and that of the witnesses
4. (a) _____ (name, address, date and place of birth)
   (b) _____ (name, address, date and place of birth) has declared that the attached document is the will of the testator and that the testator knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
   (1) the testator has signed the will or has acknowledged the testator's signature previously affixed.
   *(2) following a declaration of the testator stating that the testator was unable to sign the will for the following reason _____, I have mentioned this declaration on the will, *and the signature has been affixed by _____ (name and address)
7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by _____ and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of the will: _____
12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE and, if necessary, SEAL

*to be completed if appropriate

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(6) In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this section. The absence or irregularity of a certificate does not affect the formal validity of a will under this section.

(7) An international will is subject to the ordinary rules of revocation of wills.

(8) Subsections (1) to (7) of this section derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this section, regard shall be had to its international origin and to the need for uniformity in its interpretation.

(9) Individuals who have been admitted to practice law before the courts of this state and are currently licensed so to do are authorized persons in relation to international wills.

(10) This section may be referred to and cited as the Uniform International Wills Act. [1981 c.481 §2; 1993 c.98 §2]

112.235 Execution of a will. A will shall be in writing and shall be executed with the following formalities:

(1) The testator, in the presence of each of the witnesses, shall:

(a) Sign the will; or

(b) Direct one of the witnesses or some other person to sign thereon the name of the testator; or

(c) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

(2) Any person who signs the name of the testator as provided in subsection (1)(b) of this section shall sign the signer's own name on the will and write on the will that the signer signed the name of the testator at the direction of the testator.

(3) At least two witnesses shall each:

(a) See the testator sign the will; or

(b) Hear the testator acknowledge the signature on the will; and

(c) Attest the will by signing the witness' name to it.

(4) A will executed in compliance with the Uniform International Wills Act shall be deemed to have complied with the formalities of this section. [1969 c.591 §37; 1973 c.506 §7; 1981 c.481 §4]

112.237 [1981 c.481 §3; repealed by 1993 c.98 §26]

112.245 Witness as beneficiary. A will attested by an interested witness is not thereby invalidated. An interested witness is one to whom is devised a personal and beneficial interest in the estate. [1969 c.591 §38; 1973 c.506 §8]

112.255 Validity of execution of a will. (1) A will is lawfully executed if it is in writing, signed by or at the direction of the testator and otherwise executed in accordance with the law of:

(a) This state at the time of execution or at the time of death of the testator; or

(b) The domicile of the testator at the time of execution or at the time of the testator's death; or

(c) The place of execution at the time of execution.

(2) A will is lawfully executed if it complies with the Uniform International Wills Act. [1969 c.591 §39; 1981 c.481 §5]

112.265 Testamentary additions to trusts. (1) A devise may be made by a will to the trustee or trustees of a trust, regardless of the existence, size or character of the corpus of the trust, if:

(a) The trust is established or will be established by the testator, or by the testator and some other person or persons, or by some other person or persons;

(b) The trust is identified in the testator's will; and

(c) The terms of the trust are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will, or in the valid last will of a person who has predeceased the testator.

(2) The trust may be funded during the testator's lifetime or upon the testator's death by the testator's devise to the trustee or trustees. The trust may be a funded or unfunded life insurance trust, although the trustor has reserved any or all of the rights of ownership of the insurance contracts.

(3) The devise shall not be invalid because the trust:

(a) Is amendable or revocable, or both; or

(b) Was amended after the execution of the testator's will or after the death of the testator.

(4) Unless the testator's will provides otherwise, the property so devised:

(a) Shall not be considered to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and

(b) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the death of the testator, regardless of whether made before or after the execution of the testator's will.

(5) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator shall cause the devise to lapse.

(6) This section shall not be construed as providing an exclusive method for making devises to the trustee or trustees of a trust established otherwise than by the will of the testator making the devise.

(7) This section shall be so construed as to effectuate its general purpose to make uniform the law of those states that enact the same or similar provisions. [1969 c.591 §40; 1999 c.132 §1]

112.270 Procedure to establish contract to make will or devise or not to revoke will or devise. (1) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, executed after January 1, 1974, shall be established only by:

(a) Provisions of a will stating material provisions of the contract;

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. [1973 c.506 §13]

112.272 In terrorem clauses valid and enforceable; exceptions. (1) Except as provided in this section, an in terrorem clause in a will is valid and enforceable. If a devisee contests a will that contains an in terrorem clause that applies to the devisee, the court shall enforce the clause against the devisee even though the devisee establishes that there was probable cause for the contest.

(2) The court shall not enforce an in terrorem clause if the devisee contesting the will establishes that the devisee has probable cause to believe that the will is a forgery or that the will has been revoked.

(3) The court shall not enforce an in terrorem clause if the contest is brought by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor, or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, "in terrorem clause" means a provision in a will that reduces or eliminates a devise to a devisee if the devisee contests the will. [1997 c.151 §2]

112.275 Manner of revocation or alteration exclusive. A will may be revoked or altered only as provided in ORS 112.285 to 112.315. [1969 c.591 §41]

112.285 Express revocation or alteration. (1) A will may be revoked or altered by another will.

(2) A will may be revoked by being burned, torn, canceled, obliterated or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two witnesses. [1969 c.591 §42]

112.295 Revival of revoked or invalid will. If a will or a part thereof has been revoked or is invalid, it can be revived only by a re-execution of the will or by the execution of another will in which the revoked or invalid will or part thereof is incorporated by reference. [1969 c.591 §43]

112.305 Revocation by marriage. A will is revoked by the subsequent marriage of the testator if the testator is survived by a spouse, unless:

(1) The will evidences an intent that it not be revoked by the subsequent marriage or was drafted under circumstances establishing that it was in contemplation of the marriage; or

(2) The testator and spouse entered into a written contract before the marriage that either makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator. [1969 c.591 §44]

112.315 Revocation by divorce or annulment. Unless a will evidences a different intent of the testator, the divorce or annulment of the marriage of the testator after the execution of the will revokes all provisions in the will in favor of the former spouse of the testator and any provision therein naming the former spouse as executor, and the effect of the will is the same as though the former spouse did not survive the testator. [1969 c.591 §45]

112.325 Contract of sale of property devised not a revocation. An executory contract of sale made by a testator to convey property devised in a will previously made, is not a revocation of the previous devise, either in law or equity; but the property shall pass by the devise, subject to the same remedies on the agreement, for specific performance or otherwise, against devisees as might be had against the heirs of the testator if the property had descended to them. [1969 c.591 §46]

112.335 Encumbrance or disposition of property after making will. An encumbrance or disposition of property by a testator after the testator makes a will does not affect the operation of the will upon a remaining interest therein that is subject to the disposal of the testator at the time of the death of the testator. [1969 c.591 §47]

112.345 Devise of life estate. A devise of property to any person for the term of the life of the person, and after the death of the person to the children or heirs of the person, vests an estate or interest for life only in the devisee and remainder in the children or heirs. [1969 c.591 §48]

112.355 Devise passes all interest of testator. A devise of property passes all of the interest of the testator therein at the time of the death of the testator, unless the will evidences the intent of the testator to devise a lesser interest. [1969 c.591 §49]

112.365 Property acquired after making will. Any property acquired by the testator after the making of a will passes thereby, and in like manner as if title thereto were vested in the testator at the time of making the will, unless the intent expressed in the will is clear and explicit to the contrary. [1969 c.591 §50]

112.375 [1969 c.591 §51; repealed by 1973 c.506 §46]

112.385 Nonademption of specific devises in certain cases. (1) In the situations and under the circumstances provided in and governed by this section, specific devises will not fail or be extinguished by the destruction, damage, sale, condemnation or

change in form of the property specifically devised. This section is inapplicable if the intent that the devise fail under the particular circumstances appears in the will or if the testator during the lifetime of the testator gives property to the specific devisee with the intent of satisfying the specific devise.

(2) Whenever the subject of a specific devise is property only part of which is destroyed, damaged, sold or condemned, the specific devise of any remaining interest in the property owned by the testator at the time of death is not affected by this section; but this section applies to the part which would have been adeemed under the common law by the destruction, damage, sale or condemnation.

(3) If insured property that is the subject of a specific devise is destroyed or damaged, the specific devisee has the right to receive, reduced by any amount expended or incurred by the testator in restoration or repair of the property:

(a) Any insurance proceeds paid to the personal representative after the death of the testator, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to any insurance proceeds paid to the testator within six months before the death of the testator.

(4) If property that is the subject of a specific devise is sold by the testator, the specific devisee has the right to receive:

(a) Any balance of the purchase price unpaid at the time of the death of the testator, including any security interest in the property and interest accruing before the death, if part of the estate, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of the purchase price paid to the testator within six months before the death of the testator. Acceptance of a promissory note of the purchaser or a third party is not considered payment, but payment on the note is payment on the purchase price. Sale by an agent of the testator or by a trustee under a revocable living trust created by the testator, the principal of which is to be paid to the personal representative or estate of the testator on the death of the testator, is a sale by the testator for purposes of this section.

(5) If property that is the subject of a specific devise is taken by condemnation before the death of the testator, the specific devisee has the right to receive:

(a) Any amount of the condemnation award unpaid at the time of the death, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of an award paid to the testator within six months before the death of the testator. In the event of an appeal in a condemnation proceeding, the award, for purposes of this section, is limited to the amount established on the appeal.

(6) If property that is the subject of a specific devise is sold by a conservator of the testator, or insurance proceeds or a condemnation award are paid to a conservator of the testator, the specific devisee has the right to receive a general pecuniary legacy equivalent to the proceeds of the sale, the insurance proceeds or the condemnation award, reduced by any amount expended or incurred in restoration or repair of the property. This subsection does not apply if the testator, after the sale, receipt of insurance proceeds or award, is adjudicated competent and survives such adjudication by six months.

(7) If securities are specifically devised, and after the execution of the will other securities in the same or another entity are distributed to the testator by reason of ownership of the specifically devised securities and as a result of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange or any other similar transaction, and if the other securities are part of the estate of the testator at death, the specific devise is considered to include the additional or substituted securities. Distributions prior to death with respect to a specifically devised security not provided for in this subsection are not part of the specific devise. As used in this subsection, "securities" means the same as defined in ORS 59.015.

(8) The amount a specific devisee receives as provided in this section is reduced by any expenses of the sale or of collection of proceeds of insurance, sale or condemnation award and by any amount by which the income tax of the decedent or the estate of the decedent is increased by reason of items provided for in this section. Expenses include legal fees paid or incurred. [1969 c.591 §52; 1973 c.506 §14; 1975 c.491 §6; 1995 c.664 §84]

112.395 When estate passes to issue of devisee; anti-lapse; class gifts. When property is devised to any person who is related by blood or adoption to the testator and who dies before the testator leaving lineal descendants, the descendants take by representation the property the devisee would have taken if the devisee had survived the testator, unless otherwise provided in the will of the testator. Unless otherwise provided in the will of the testator, one who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee for purposes of this sec-

tion if death occurred after execution of the will. [1969 c.591 §53; 1973 c.506 §15]

112.400 Effect of failure of devise. Except as provided in ORS 112.395:

(1) If a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) If the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the share passes to the other residuary devisee or to other residuary devisees in proportion to their interests in the residue. [1973 c.506 §17]

112.405 Children born or adopted after execution of will; pretermitted children. (1) As used in this section, "pretermitted child" means a child of a testator who is born or adopted after the execution of the will of the testator, who is neither provided for in the will nor in any way mentioned in the will and who survives the testator.

(2) If a testator has one or more children living when the testator executes a will and no provision is made in the will for any such living child, a pretermitted child shall not take a share of the estate of the testator disposed of by the will.

(3) If a testator has one or more children living when the testator executes a will and provision is made in the will for one or more of such living children, a pretermitted child is entitled to share in the estate of the testator disposed of by the will as follows:

(a) The pretermitted child may share only in the portion of the estate devised to the living children by the will.

(b) The share of each pretermitted child shall be the total value of the portion of the estate devised to the living children by the will divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the will.

(c) To the extent feasible, the interest of a pretermitted child in the estate shall be of the same character, whether equitable or legal, as the interest the testator gave to the living children by the will.

(4) If a testator has no child living when the testator executes a will, a pretermitted child shall take a share of the estate as though the testator had died intestate.

(5) A pretermitted child may recover the share of the estate to which the child is entitled, as provided in this section, either from the other children under subsection (3) of this section or from the testamentary beneficiaries under subsection (4) of this section, ratably, out of the portions of the estate passing to those persons under the will. In abating the interests of those beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved so far as possible. [1969 c.591 §54]

112.410 Effect of general disposition or residuary clause on testator's power of appointment. A general residuary clause in a will or a will making general disposition of all of the testator's property does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power. [1973 c.506 §12]

112.415 Persons not entitled to estate of testator. Except as otherwise expressly provided by law, a person, including a child of the testator and a descendant of that child, shall not take or be entitled to take any portion of the estate of a testator disposed of by the will of the testator other than as provided in the will. [1969 c.591 §55]

112.425 [1969 c.591 §56; repealed by 1989 c.770 §11]

112.435 Disposition of wills deposited with county clerk. So far as the county clerk is able, the county clerk of each county shall deliver to the testator, or to the person to whom the will is to be delivered after the death of the testator, each will deposited in the office of the county clerk for safekeeping pursuant to ORS 114.410 (1965 Replacement Part). Any will the county clerk has been unable to so deliver before January 1, 2010, may be destroyed by the county clerk. [1969 c.591 §57]

EFFECT OF HOMICIDE OR ABUSE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS

112.455 Definitions for ORS 112.455 to 112.555. As used in ORS 112.455 to 112.555:

(1) "Abuser" means a person who is convicted of a felony by reason of conduct that constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS 124.110.

(2) "Decedent" means:

(a) A person whose life is taken by a slayer; or

(b) A person whose date of death is not later than five years after an abuser is convicted of a felony by reason of conduct against the person that constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS 124.110.

(3) "Slayer" means a person who, with felonious intent, takes or procures the taking of the life of a decedent. [1969 c.591 §58; 2005 c.270 §1]

Note: Section 11, chapter 270, Oregon Laws 2005, provides:

Sec. 11. (1) Except as provided by subsection (2) of this section, the amendments to ORS 112.455, 112.465, 112.475, 112.485, 112.495, 112.505, 112.515, 112.525, 112.535 and 112.545 by sections 1 to 10 of this 2005 Act apply to all conduct that constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS 124.110, whether occurring before, on or after the effective date of this 2005 Act [January 1, 2006].

(2) The amendments to ORS 112.455, 112.465, 112.475, 112.485, 112.495, 112.505, 112.515, 112.525, 112.535 and 112.545 by sections 1 to 10 of this 2005 Act do not apply to persons who die before the effective date of this 2005 Act. [2005 c.270 §11]

112.457 Application to abuser. ORS 112.455 to 112.555 apply to an abuser only if the decedent dies within five years after the abuser is convicted of a felony by reason of conduct that constitutes physical abuse of the decedent, as described in ORS 124.105, or financial abuse of the decedent, as described in ORS 124.110. [2005 c.671 §7]

112.465 Slayer or abuser considered to predecease decedent. (1) Property that would have passed by reason of the death of a decedent to a person who was a slayer or an abuser of the decedent, whether by intestate succession, by will or by trust, passes and vests as if the slayer or abuser had predeceased the decedent.

(2) Property that would have passed by reason of the death of an heir or devisee of a decedent to a person who was the slayer or abuser of the decedent, whether by intestate succession, by will or by trust, passes and vests as if the slayer or abuser had predeceased the decedent unless the heir or devisee specifically provides otherwise in a will or other instrument executed after the death of the decedent. [1969 c.591 §59; 2005 c.270 §2; 2005 c.535 §1a]

Note: Section 3, chapter 535, Oregon Laws 2005, provides:

Sec. 3. The amendments to ORS 112.465 and 112.515 by sections 1a and 2a of this 2005 Act apply only to heirs or devisees who die on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.535 §3; 2005 c.535 §3a]

Note: See note under 112.455.

112.475 Jointly owned property. If a slayer of a decedent and the decedent, or an abuser of a decedent and the decedent, owned property as tenants by the entirety or with a right of survivorship, upon the death of the decedent an undivided one-half interest remains in the slayer or abuser for the lifetime of the slayer or abuser and subject to that interest the property passes to and is vested in the heirs or devisees of the decedent other than the slayer or abuser. [1969 c.591 §60; 2005 c.270 §3]

Note: See note under 112.455.

112.485 Property jointly owned with others. If a slayer of a decedent, the decedent and one or more other persons owned property with a right of survivorship, or if an abuser of a decedent, the decedent and one more other persons owned property with a right of survivorship, upon the death of the decedent the interest of the slayer or abuser remains as an undivided interest in the slayer or abuser for the lifetime of the slayer or abuser and subject to that interest the property passes to and is vested in the other surviving owner or owners. [1969 c.591 §61; 2005 c.270 §4]

Note: See note under 112.455.

112.495 Reversions, vested remainders, contingent remainders and future interests. (1) Property in which a slayer of a decedent, or an abuser of a decedent, owns a reversion or vested remainder subject to an estate for the lifetime of the decedent passes to the heirs or devisees of the decedent for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death. If the particular estate is owned by a third person for the lifetime of the decedent, the estate continues in the third person for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death.

(2) As to a contingent remainder or executory or other future interest owned by a slayer of a decedent or an abuser of a decedent that becomes vested in the slayer or abuser or increased in any way for the slayer or abuser upon the death of the decedent:

(a) If the interest would not have increased or become vested if the slayer or abuser had predeceased the decedent, the slayer or abuser is considered to have predeceased the decedent; and

(b) In any case, the interest shall not be so vested or increased during a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death. [1969 c.591 §62; 2005 c.270 §5]

Note: See note under 112.455.

112.505 Property appointed; powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of a slayer of a decedent or an abuser of a decedent is distributed as if the slayer or abuser had predeceased the decedent.

(2) Property owned either presently or in remainder by a slayer of a decedent or an abuser of a decedent, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment, passes to and is vested in the heirs or devisees of the decedent other than the slayer or abuser. Property so owned by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of

appointment to a particular person or persons or to a class of persons, passes to the person or persons or in equal shares to the members of the class of persons to the exclusion of the slayer or abuser. [1969 c.591 §63; 2005 c.270 §6]

Note: See note under 112.455.

112.515 Proceeds of insurance on life and other benefit plans of decedent. (1) Except as provided under subsection (2) of this section, proceeds payable under any of the following instruments to or for the benefit of a slayer of a decedent or an abuser of a decedent, as beneficiary or assignee of the decedent or as beneficiary or assignee of an heir or devisee of the decedent, must be paid to the secondary beneficiary or, if there is no secondary beneficiary, to the personal representative of the estate of the decedent or the decedent's heir or devisee:

(a) A policy or certificate of insurance on the life of the decedent.

(b) A certificate of membership in any benevolent association or organization on the life of the decedent.

(c) Rights of the decedent as survivor of a joint life policy.

(d) Proceeds under any pension, profit-sharing or other plan.

(2) Proceeds payable under any of the instruments specified in subsection (1) of this section to or for the benefit of a slayer of a decedent or an abuser of a decedent as beneficiary or assignee of an heir or devisee of the decedent shall be paid to the slayer or abuser if the heir or devisee specifically provides for that payment by written instrument executed after the death of the decedent. [1969 c.591 §64; 2005 c.270 §7; 2005 c.535 §2a]

Note: See note under 112.455.

Note: See first note under 112.465.

112.525 Proceeds of insurance on life of slayer or abuser. If a decedent is beneficiary or assignee of any policy or certificate of insurance on the life of a slayer of the decedent or an abuser of the decedent, the proceeds shall be paid to the personal representative of the decedent's estate unless:

(1) The policy or certificate names some person other than the slayer or abuser, or the personal representative of the slayer or abuser, as the secondary beneficiary.

(2) The slayer or abuser, by naming a new beneficiary or assignee, performs an act which would have deprived the decedent of the interest of the decedent if the decedent had been living. [1969 c.591 §65; 2005 c.270 §8]

Note: See note under 112.455.

112.535 Payment by insurance company, financial institution, trustee or obligor; no additional liability. Any insurance company making payment according to the terms of its policy, or any financial institution, trustee or other person performing an obligation to a slayer of a decedent or an abuser of a decedent is not subject to additional liability because of ORS 112.455 to 112.555 if the payment or performance is made without written notice by a claimant of a claim arising under those sections. Upon receipt of written notice the person to whom it is directed may withhold any disposition of the property pending determination of the duties of the person. [1969 c.591 §66; 1997 c.631 §403; 2005 c.270 §9]

Note: See note under 112.455.

112.545 Rights of persons without notice dealing with slayer or abuser. ORS 112.455 to 112.555 do not affect the rights of any person who for value and without notice purchases or agrees to purchase property that a slayer of a decedent or an abuser of a decedent would have acquired except for ORS 112.455 to 112.555, but all proceeds received by the slayer or abuser from the sale shall be held by the slayer or abuser in trust for the persons entitled to the property as provided in ORS 112.455 to 112.555. The slayer or abuser is liable for any portion of the proceeds of the sale that the slayer or abuser spends and for the difference, if any, between the amount received from the sale and the actual value of the property. [1969 c.591 §67; 2005 c.270 §10]

Note: See note under 112.455.

112.555 Evidence of felonious and intentional killing; conviction as conclusive. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of ORS 112.455 to 112.555. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of ORS 112.455 to 112.555. [1969 c.591 §68; 1973 c.506 §18]

UNIFORM SIMULTANEOUS DEATH ACT

112.570 Definitions for ORS 112.570 to 112.590. As used in ORS 112.570 to 112.590:

(1) "Co-owners with right of survivorship" means joint tenants, tenants by the entirety and any other co-owners of property or accounts that are held in a manner that entitles one or more of the owners to ownership of the whole of the property or account upon the death of one or more of the other owners.

(2) "Governing instrument" means:

(a) A deed;

(b) A will;

(c) A trust;

(d) An insurance or annuity policy account with a payable-on-death designation;

(e) A pension, profit-sharing, retirement or similar benefit plan;

(f) An instrument creating or exercising a power of appointment or a power of attorney; or

(g) Any other dispositive, appointive or nominative instrument of a type similar to those instruments specified in this subsection.

(3) "Payor" means a trustee, insurer, employer, governmental agency, political subdivision or any other person authorized or obligated by law or by a governing instrument to make payments. [1999 c.131 §1]

Note: 112.570 to 112.590 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 112 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

112.572 Requirement of survival. Except as provided in ORS 112.586, if the title to property, the devolution of property, the right to elect an interest in property or the right to exempt property depends upon whether a specified person survives the death of another person, the specified person shall be deemed to have died before the other person unless it is established by clear and convincing evidence that the specified person survived the other person by at least 120 hours. [1999 c.131 §2]

Note: See note under 112.570.

112.575 [Formerly 112.010; repealed by 1999 c.131 §11]

112.578 Construction of survivorship provisions in governing instruments. Except as provided in ORS 112.586, if a governing instrument contains a provision the operation of which is conditioned on whether a specified person survives the death of another person or survives another event, the specified person shall be deemed to have died before the other person or before the other event unless it is established by clear and convincing evidence that the specified person survived the other person or event by at least 120 hours. [1999 c.131 §3]

Note: See note under 112.570.

112.580 Co-owners with right of survivorship; requirement of survival. (1) Except as provided in ORS 112.586, if property is held by two co-owners with right of survivorship and both co-owners are deceased, one-half of the property passes as if one co-owner had survived the second co-owner by 120 hours or more, and one-half of the property passes as if the second co-owner had survived the first co-owner by 120 hours or more, unless it is established by clear and convincing evidence that one of two co-owners survived the other co-owner by at least 120 hours.

(2) Except as provided in ORS 112.586, if property is held by more than two co-owners and it is not established by clear and convincing evidence that at least one of the owners survived the others by at least 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. [1999 c.131 §4]

Note: See note under 112.570.

112.582 Evidence of death or status. (1) For the purpose of establishing death under the survivorship rules established under ORS 112.570 to 112.590, death occurs when an individual has sustained irreversible cessation of circulatory and respiratory functions, or when there has been an irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards.

(2)(a) For the purpose of establishing death under the survivorship rules established under ORS 112.570 to 112.590, a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death is alleged to have occurred is prima facie evidence of the identity of the decedent and of the fact, place, date and time of death.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead or alive is prima facie evidence of the status of the person and of the dates, circumstances and places disclosed by the record or report.

(3) In the absence of prima facie evidence of death under subsection (2) of this section, the facts surrounding a person's death may be established by clear and convincing evidence. Circumstantial evidence may be considered in determining whether a person has died and the circumstances of the death.

(4) An individual whose death is not otherwise established under this section but who is absent for a continuous period of five years is presumed to be dead if the person has made no contact with another person during the five-year period and the absence of the person cannot be satisfactorily explained after diligent search or inquiry. A person presumed dead under this subsection is presumed to have died at the end of the five-year period unless it is proved by a preponderance of the evidence that death occurred at a different time.

(5) In the absence of evidence contradicting a time of death specified in a document described in subsection (2) of this section, a document described in subsection

(2) of this section that indicates a time of death 120 hours or more after the time of death of another person conclusively establishes that the person specified in the document survived the other person by at least 120 hours, without regard to the manner in which the time of death of the other person is determined. [1999 c.131 §5]

Note: See note under 112.570.

112.585 [Formerly 112.020; repealed by 1999 c.131 §11]

112.586 Exceptions. (1) The survivorship rules established under ORS 112.570 to 112.590 do not apply in any situation in which application would result in escheat of an intestate estate to the state.

(2) The survivorship rules established under ORS 112.570 to 112.590 do not apply if a governing instrument contains language that specifically addresses the possibility of simultaneous deaths or deaths in a common disaster, and the language of the instrument is controlling under the circumstances of the deaths.

(3) The survivorship rules established under ORS 112.570 to 112.590 do not apply if a governing instrument expressly provides that a person is not required to survive the death of another person or to survive another event by any specified period.

(4) The survivorship rules established under ORS 112.570 to 112.590 do not apply if the governing instrument expressly requires the person to survive the death of another person or to survive another event for a specified period of time other than provided under the survivorship rules established under ORS 112.570 to 112.590. If the governing instrument so provides, survival of the death of the other person or survival of the other event by at least the specified amount of time must be established by clear and convincing evidence.

(5) The survivorship rules established under ORS 112.570 to 112.590 do not apply if application of those rules would cause a nonvested property interest or a power of appointment to be invalid under ORS 105.950 (1)(a), (2)(a) or (3)(a). In cases subject to this subsection, survival of the death of the other person or survival of the other event must still be established by clear and convincing evidence.

(6) The survivorship rules established under ORS 112.570 to 112.590 do not apply in cases in which there are multiple governing instruments and application of the rules to the governing instruments would result in an unintended failure or duplication of a disposition. In cases subject to this subsection, survival of the death of the other person or survival of the other event must still be established by clear and convincing evidence. [1999 c.131 §6]

Note: See note under 112.570.

112.588 Protection of payors and other third parties. (1) Unless a payor or other third party has received written notice of a claim under subsection (2) of this section, the payor or other third party is not liable for making a payment to, transferring property to, or conferring any other benefit on a person who appears to be entitled to the payment, property or benefit under a good faith reading of a governing instrument but who is not entitled to the payment, property or benefit by reason of the survivorship rules established under ORS 112.570 to 112.590. A payor or other third party is liable for a payment, property or other benefit conveyed after the payor or other third party receives written notice of a claim under subsection (2) of this section.

(2) Written notice of a claim that a person is not entitled to payment, property or other benefit by reason of the survivorship rules established under ORS 112.570 to 112.590 must be:

(a) Mailed to the main office or home of a payor or other third party by registered or certified mail, return receipt requested; or

(b) Served upon the payor or other third party in the manner provided by ORCP 7 for service of summons in a civil action.

(3) Upon receipt of written notice of a claim under subsection (2) of this section, a payor or other third party may deposit any money or property that is subject to the claim with any court conducting probate proceedings for one of the decedents' estates. If probate proceedings have not been commenced, the money or property may be deposited with the court with probate jurisdiction in the county in which one of the decedents resided. The court shall hold the funds or property and shall determine the rights of all parties under the governing instrument. Deposits made with the court under this subsection discharge the payor or other third party from all claims for the value of amounts paid to or items of property deposited with the court. [1999 c.131 §7]

Note: See note under 112.570.

112.590 Protection of bona fide purchasers; personal liability of recipient. (1) Unless the person has notice of the claim at the time the purchase, payment or delivery is made, a person who purchases property for value, or who receives payment, property or other benefit in full or partial satisfaction of a legally enforceable obligation, is not liable to another person with a claim to the payment, property or benefit by reason of the operation of the survivorship rules estab-

lished under ORS 112.570 to 112.590 and need not return the payment, property or other benefit.

(2) A person who receives payment, property, or other benefit to which the person is not entitled by reason of the survivorship rules established under ORS 112.570 to 112.590 must return the payment, property or other benefit if:

(a) The person was aware of a claim to the payment, property or other benefit under the survivorship rules established under ORS 112.570 to 112.590 at the time the purchase, payment or delivery was made; or

(b) The person received the payment, property or other benefit for no value.

(3) A person who receives any payment, property or other benefit to which the person is not entitled because any part of ORS 112.570 to 112.590 is preempted by federal law must return the payment, property or other benefit if the person received the payment, property or other benefit for no value.

(4) Any person who is required to return any payment, property or other benefit under this section and who does not return the payment, property or other benefit is personally liable to a person with a right to the property under the survivorship rules established under ORS 112.570 to 112.590 or with a right to the property by reason of federal preemption of all or part of the survivorship rules. [1999 c.131 §8]

Note: See note under 112.570.

112.595 [Formerly 112.030; repealed by 1999 c.131 §11]

112.605 [1969 c.591 §72; repealed by 1999 c.131 §11]

112.615 [Formerly 112.040; repealed by 1999 c.131 §11]

112.625 [Formerly 112.060; repealed by 1999 c.131 §11]

112.635 [Formerly 112.070; repealed by 1999 c.131 §11]

112.645 [Formerly 112.080; repealed by 1999 c.131 §11]

112.650 [1975 c.480 §9 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.652 [1975 c.480 §2 (enacted in lieu of 112.675); 1981 c.55 §1; repealed by 2001 c.245 §19]

112.655 [1975 c.480 §3 (enacted in lieu of 112.675); 1981 c.55 §2; repealed by 2001 c.245 §19]

112.657 [1975 c.480 §4 (enacted in lieu of 112.675); 1981 c.55 §3; repealed by 2001 c.245 §19]

112.660 [1975 c.480 §5 (enacted in lieu of 112.675); 1981 c.55 §4; repealed by 2001 c.245 §19]

112.662 [1975 c.480 §6 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.665 [1975 c.480 §7 (enacted in lieu of 112.675); 1981 c.55 §5; repealed by 2001 c.245 §19]

112.667 [1975 c.480 §8 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.675 [1969 c.591 §77; repealed by 1975 c.480 §1 (112.650 to 112.667 enacted in lieu of 112.675)]

DOWER AND CURTESY ABOLISHED

112.685 Dower and curtesy abolished. Dower and curtesy, including inchoate dower and curtesy, are abolished, but any right to or estate of dower or curtesy of the surviving spouse of any person who died before July 1, 1970, shall continue and be governed by the law in effect immediately before that date. [1969 c.591 §78]

112.695 Statute of limitation for recovery of dower or curtesy. No action or suit shall be brought after 10 years from the death of a decedent to recover or reduce to possession curtesy or dower by the surviving spouse of the decedent. [Formerly 113.090]

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

112.705 Short title. ORS 112.705 to 112.775 may be cited as the Uniform Disposition of Community Property Rights at Death Act. [1973 c.205 §11]

112.715 Application to certain property. ORS 112.705 to 112.775 apply to the disposition at death of the following property acquired by a married person:

(1) All personal property, wherever situated:

(a) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or

(b) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(c) Traceable to that community property.

(2) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property. [1973 c.205 §1]

112.725 Rebuttable presumptions. In determining whether ORS 112.705 to 112.775 apply to specific property the following rebuttable presumptions apply:

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which ORS 112.705 to 112.775 apply; and

(2) Real property situated in this state and personal property wherever situated ac-

quired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which ORS 112.705 to 112.775 apply. [1973 c.205 §2]

112.735 One-half of property not subject to testamentary disposition or right to elect against will. Upon death of a married person, one-half of the property to which ORS 112.705 to 112.775 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. With respect to property to which ORS 112.705 to 112.775 apply, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will. [1973 c.205 §3]

112.745 Proceedings to perfect title. If the title to any property to which ORS 112.705 to 112.775 apply was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by the surviving spouse or the spouse's successor in interest. [1973 c.205 §4]

112.755 Who may institute proceedings. If the title to any property to which ORS 112.705 to 112.775 apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by an heir, devisee, or creditor of the decedent. [1973 c.205 §5]

112.765 Rights of purchaser. (1) If a surviving spouse has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender. [1973 c.205 §6]

112.775 Application and construction. (1) ORS 112.705 to 112.775 do not affect rights of creditors with respect to property to which ORS 112.705 to 112.775 apply.

(2) ORS 112.705 to 112.775 do not prevent married persons from severing or altering their interests in property to which ORS 112.705 to 112.775 apply.

(3) ORS 112.705 to 112.775 do not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

(4) ORS 112.705 to 112.775 shall be so applied and construed as to effectuate their general purpose to make uniform the law with respect to the subject of ORS 112.705 to 112.775 among those states which enact it. [1973 c.205 §§7,8,9,10]

DISPOSITION OF WILLS

112.800 Definition for ORS 112.800 to 112.830. As used in ORS 112.800 to 112.830, unless the context requires otherwise, "person" means a natural person, a partnership, a corporation, a bank, a trust company and any other organization or legal entity. [1989 c.770 §1]

Note: 112.800 to 112.830 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 112 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

112.805 Exclusive manner of disposing of wills; destroyed will not revoked. (1) Any person having custody of a will has a duty to maintain custody of the will and may not destroy or discard the will, disclose its contents to any person or deliver the will to any person except as authorized by the testator or as permitted by ORS 112.800 to 112.830.

(2) Nothing in ORS 112.800 to 112.830 bars a testator from destroying, revoking, delivering to any person or otherwise dealing with the will of the testator.

(3) A will destroyed in accordance with ORS 112.800 to 112.830 shall not be revoked by virtue of such destruction and its contents may be proved by secondary evidence. [1989 c.770 §§2,7,10]

Note: See note under 112.800.

112.810 Duties of custodian of will. (1) Any person having custody of a will:

(a) Shall deliver the will to the testator upon demand from the testator, unless the person having custody of the will is an attorney and is entitled to retain the will pursuant to ORS 87.430;

(b) May at any time deliver the will to the testator;

(c) Upon demand from the conservator, shall deliver the will to a conservator for the testator;

(d) Upon demand from the attorney-in-fact, shall deliver the will to an attorney-in-fact acting under a durable power of attorney signed by the testator expressly authorizing the attorney-in-fact to demand custody of the will;

(e) May deliver the will to any attorney licensed to practice law in Oregon willing to accept delivery of the will if the person does not know or cannot ascertain, upon diligent inquiry, the address of the testator; or

(f) Shall deliver the will to a court having jurisdiction of the estate of the testator or to a personal representative named in the will within 30 days after the date of receiving information that the testator is dead.

(2) With respect to a will held in a safe deposit box, compliance with ORS 708A.655 or 723.844 by the financial institution, trust company, savings association or credit union within which the box is located shall be deemed to be compliance with the requirements of this section. [1989 c.770 §3; 1999 c.506 §3; 2009 c.541 §2]

Note: See note under 112.800.

112.815 Conditions for disposal of will. An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if:

(1) The attorney is licensed to practice law in the State of Oregon;

(2) At least 40 years has elapsed since execution of the will;

(3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and

(4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise. [1989 c.770 §4]

Note: See note under 112.800.

112.820 Procedure for destruction of will; filing of affidavit; fee. (1) An attorney authorized to destroy a will under ORS 112.815 may proceed as follows:

(a) The attorney shall first publish a notice in a newspaper of general circulation in the county of the last-known address of the testator, if any, otherwise in the county of the principal place of business of the attorney. The notice shall state the name of the testator, the date of the will and the intent of the attorney to destroy the will if the testator does not contact the attorney within 90 days after the date of the notice.

(b) If the testator fails to contact the attorney within 90 days after the date of the notice, the attorney may destroy the will.

(c) Within 30 days after destruction of the will, the attorney shall file with the probate court in the county where the notice was published an affidavit stating the name of the testator, the name and relationship of each person named in the will whom the testator identified as related to the testator by blood, adoption or marriage, the date of the will, proof of the publication and the date of destruction.

(d) The clerk of the probate court shall charge and collect a fee of $17 for filing of the affidavit.

(2) If a will has not been admitted to probate within 40 years following the death of the testator, an attorney having custody of the will may destroy the will without notice to any person or court. [1989 c.770 §§5,6; 2003 c.737 §§56,57; 2005 c.702 §§65,66,67]

Note: Section 4 (18), chapter 659, Oregon Laws 2009, provides:

Sec. 4. (18) In addition to the fee provided for in ORS 112.820 (1)(d), for the period commencing October 1, 2009, and ending June 30, 2011, the clerk of the probate court shall collect a surcharge of $1 for filing of an affidavit under ORS 112.820 (1). [2009 c.659 §4(18)]

Note: See note under 112.800.

112.825 Liability for destruction of will. A person who violates any provision of ORS 112.800 to 112.830 shall be liable to any person injured by such violation for any damages sustained thereby. An attorney who destroys a will in accordance with ORS 112.800 to 112.830 shall not be liable to the testator or any other person for such destruction or disposal. [1989 c.770 §8]

Note: See note under 112.800.

112.830 Court may order delivery of will. If it appears to a court having jurisdiction of the estate of a decedent that a person has custody of a will made by the decedent, the court may issue an order requiring that person to deliver the will to the court. [1989 c.770 §9]

Note: See note under 112.800.